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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Erik Minor

4372

37459

7590

01/07/2009

OCULOS INC

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WEST CALDWELL, NJ 07006

EXAMINER

COPPOLA, JACOB C

ART UNIT

PAPER NUMBER

3621

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/710,373	Applicant(s) MINOR, ERIK	
	Examiner JACOB C. COPPOLA	Art Unit 3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 16-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgements

1. This action is in reply to the Restriction Election filed on 20 October 2008.
2. Claims 1-26 are currently pending and have been examined.
3. All references to the capitalized versions of “Applicants” refer specifically to the Applicants of record. Any references to lower case versions of “applicant” or “applicants” refer to any or all patent “applicants.” Unless expressly noted otherwise, references to “Examiner” refers to the Examiner of record while reference to or use of the lower case version of “examiner” or “examiners” refers to examiner(s) generally. The notations in this paragraph apply to this Office Action and any future office action(s) as well.
4. This Office Action is given Paper No. 20081229. This Paper No. is for reference purposes only.

Restrictions

5. Applicant’s election without traverse of claims 1-15 in the reply filed on 20 October 2008 is acknowledged.
6. Claims 16-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 112, 2nd Paragraph

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-15 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

9. Regarding claim 1:

a. This claim recites “and/or”. This claim is indefinite because it is unclear to one of ordinary skill in the art whether the claimed list of elements is conjunctive or disjunctive;

b. This claim recites “e.g. filing a complaint”. The phrase “e.g.” renders the claim indefinite because it is unclear whether the limitation following the phrase is part of the claimed invention. See MPEP § 2173.05(d);

c. This claim recites “secure restricted access to *certain information* of said database” [emphasis added]. This claim is indefinite because one of ordinary skill in the art would not be able to determine the metes and bounds of the phrase “certain information”; and

d. This claim recites “tracking of status information about an earlier reported event supplied by said audit committee”. This claim is indefinite because it is unclear whether the committee has supplied the “status information” or the “reported event”.

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10. Regarding claim 3:

e. This claim recites “i.e. complaint”. The phrase “i.e.” renders the claim indefinite because it is unclear whether the limitation following the phrase is part of the claimed invention. See MPEP § 2173.05(d)

11. Regarding claim 5:

f. This claim recites “in order to further assure anonymity vis-à-vis said corporate network. According to Webster’s Dictionary (1987 Edition), vis-à-vis means “face to face”. This claim is indefinite because the meaning of vis-à-vis within the context of this claim is unclear.

12. Regarding claim 11:

g. This claim recites “said notifying”. This claim is indefinite because “said notifying” lacks antecedent basis in the claim.

13. The Examiner finds that because the claims are indefinite under 35 U.S.C. §112, 2nd paragraph, it is impossible to properly construe claim scope at this time. However, in accordance with MPEP §2173.06 and the USPTO’s policy of trying to advance prosecution by providing art rejections even though these claims are indefinite, the claims are construed and the prior art is applied as much as practically possible.

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Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 1-9 and 12, as understood by the Examiner, are rejected under 35 U.S.C. §102(b) as being anticipated by Walker et al. (U.S. 5,884,272 A) (“Walker”).

16. Regarding claim 1:

h. Walker discloses the following limitations:

- i. *receiving in an independent secure database (data storage device **250**) information pertaining to an event relating to accounting practices, internal accounting controls, and/or auditing of said public company (“party data”) (C5, L10-15; C8, L21-30; C8, L52 – C9, L25; and C23, L9+);*
- ii. *accessing said database via a network interface to enable anonymous submission of information by a user regarding said event (e.g. filing a complaint) (C8, L21-30; C9, L62 – C10, L11; and C23, L9+);*
- iii. *providing an audit committee with secure restricted access to certain information of said database to obtain read-only information about said event and to input status and results of an investigation pertaining to said event (C9, L62 – C10, L11; and C11+, “Cryptographic Protocols”); and*

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iv. *providing said user with secondary access to said database to enable tracking of status information about an earlier reported event supplied by said audit committee and/or to anonymously submit additional information relative to said event (C9, L62 – C10, L11; and C11+, “Cryptographic Protocols”).*

17. Regarding claims 2-9 and 12, Walker discloses the limitations of claim 1, as described above. Walker, further, discloses the limitations:

i. Claim 2: *The method as recited in claim 1, wherein said accessing step comprises accessing said database via an Internet (C7, L39-48);*

j. Claim 3: *The method as recited in claim 1, wherein said public company has the ability to restrict access to file an event (i.e. complaint) to key individuals - all individuals who are in a position to know material facts about the accounting, internal accounting controls or auditing matters of an organization (C7, L39+);*

k. Claim 4: *The method as recited in claim 2, further comprising an automated securing of the communication to ensure that user can only communicate via a secure channel over the Internet (C11+, “Cryptographic Protocols”);*

l. Claim 5: *The method as recited in claim 2, wherein said accessing step comprises querying said user regarding independence of said access network in order to further assure anonymity vis-à-vis said a corporate network (C8, L21-30; C9, L62 – C10, L11; and C23, L9+);*

m. Claim 6: *The method as recited in claim 5, wherein said accessing step further comprises confirming independence of said access network by comparing an IP address*

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of a network address terminal with a stored list of IP address applicable to the company under which said event is reported (fig. 2b with associated text);

n. Claim 7: *The method as recited in claim 1, further comprising the step of notifying an audit committee of receipt of said event by said database (C9, L62 – C10, L11);*

o. Claim 8: *The method as recited in claim 1, further comprising the step of confirming to said user that their complaint has been filed (C9, L62 – C10, L11);*

p. Claim 9: *The method as recited in claim 1, further comprising the step of matching both a Company Name and Password prior to said user posting a complaint as a further security measure and a means to guarantee delivery of complaint to the respective audit committee (claim 4);*

q. Claim 12: *The method as recited in claim 1, further comprising assigning a high-level encrypted password to said user to enable further access to said database, said password comprising a combination of alpha characters, numeric characters, upper case characters and lower case characters (claim 4).*

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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19. Claims 10, 11, and 13-15, as understood by the Examiner, are rejected under 35 U.S.C. §103(a) as being unpatentable over Walker in view of Official Notice.

20. Regarding claims 10 and 13-15, Walker discloses the limitations of claims 1 and 12, as shown above. Walker, does not directly discloses the limitations:

r. *creating a back-up of the new complaint entry into the database to prevent any data loss and guarantee delivery of entry to the audit committee; and*

s. *automatically locking out a user for a fixed time period after attempting to gain access to said database with an incorrect password;*

v. *wherein said automatic lock-out occurs after ten attempts; and*

vi. *wherein said fixed time period is at least one-half hour.*

t. However, the Examiner takes Official Notice that creating a back-up to prevent data loss is old and well-known in the art because if the first copy is lost then a second copy (i.e. the “back-up”) is available for recovery and use.

u. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to include the claimed back-up feature in the teachings of Walker in order to provide a more reliable system.

v. Moreover, the Examiner takes Official Notice that locking out a user for at least one-half hour after entering an incorrect password more than ten times is also old and well-known in the art because these types of measures help discourage and prevent automated attacks.

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w. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate these old and well-known features into the authentication system of Walker in order to make a more secure system.

21. Regarding claim 11:

x. Walker/Official Notice discloses the limitations of claim 10, as shown above.

Walker/Official Notice, further, discloses the limitations:

vii. *wherein said notifying occurs via email* (Walker, C9, L62 – C10, L11).

22. The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

23. Using the broadest reasonable interpretation, the following definitions are relied upon by the Examiner when interpreting claim language:

y. **Password** “The string of characters entered by a user to verify his or her identity to the network. The system compares the code against a stored list of authorized passwords and users. If the code is legitimate, the system allows the user access at whatever security level has been approved for the owner of the password. Ideally a password is a combination of text, numbers, and punctuation or other characters that

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cannot be guessed at or easily cracked by intruders.” (Computer Dictionary, 5th Edition, Microsoft Press, Redmond, WA, 2002)

Conclusion

24. In accordance with *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), the Examiner finds that the references How Computers Work, Millennium Ed. By Ron White; How Networks Work, Bestseller Ed. By Frank J. Derfler et al.; How the Internet Works, Millennium Ed. By Preston Gralla; and Desktop Encyclopedia of the Internet by Nathan J. Muller, is additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. Each reference is cited in its entirety. Moreover, because these references are directed towards beginners (see *e.g.* “User Level Beginning...”), because of the references’ basic content (which is self-evident upon examination of the references), and after further review of the entire record including the prior art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that these references are primarily directed towards those of low skill in this art. Because these references are directed towards those of low skill in this art, the Examiner finds that one of ordinary skill in this art must—at the very least—be aware of and understand the knowledge and information contained within these references.

25. Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to Jacob C. Coppola whose telephone number is (571) 270-3922. The Examiner can normally be reached on

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Monday-Friday, 9:00 a.m. - 5:00 p.m. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Fischer can be reached at (571) 272-6779.

26. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, please contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

/JACOB C. COPPOLA/
Patent Examiner, Art Unit 3621
December 29, 2008

/ANDREW J. FISCHER/
Supervisory Patent Examiner, Art Unit 3621